1941 **K** **File No.** O. Town Plan/41

Legal **DEPARTMENT**

A BRANCH

SOH 2315

Subject:— Opinions under the Bombay Town Planning Act, 1915

P.26E.

File No. O Town Plan/41

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I Office of the R.L.A.

It is clear from the Regulations controlling Development embodied in Town Planning Scheme Panchgani No. 1(Final) particularly regulation (a) read with regulation (f), that final plot No.12 which belongs to Government is a building plot and is intended for a residential purpose only. The use of this plot for any other purpose would therefore be contrary to the final Town Planning Scheme. The lease of a part of the plot by Government for thoeextension of theparsi cemetery and the subsequent permission to erect a prayer hall thereon would involve and for our ends of legal validity would require to be implemented by, a suitable variation in the Scheme and such variation will have to be effected in accordance with the procedure provided in section 46(1) of theTown Planning Act (see Remembrancer of Legal Affair's opinion No. 3583, dated the 22nd June 1934 followed in Remembrancer of Legal Affair's opinion No. 1966, dated 21st February 1939). Under the Town Planning Act, 1915 there is no power vesting in Government to condone any breach of theregulations although a decision given by Government or the Commissioner, as the case may be, under section43(3) is final and conclusive.

Sd/-P.N.M.
O.C.
Remembrancer of Legal Affairs.

U.D. to G.D. No. 730 , dated the 25th January 1941.

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25/4/50.

Office of the R.L.A.

The discretionary powers to grant or refuse sanction to a draft scheme under section 14(2) of the Bombay Town Planning Act, 1915(Bom. I of 1915) are very wide and under that provision it will be open to the Provincial Government to sanction the draft scheme with or without modification and subject to such conditions as Government may be think fit to impose.

2 As regards paragraph 4 at p.193 which in turn refers to paragraph 11 at pp. 188-189 ante, it appears that the Deputy Secretary, F.D. refers to the fully developed plot valuation with reference to proviso 4 at p.169 ante and to the decision of the Departments to give effect to the orders in Government Memorandum dated the 20th October 1939(p.49 ante) from the date of the completion of the scheme (p.76 ante and para.1 at pp. 182-183 ante). Viewed from this point the expression "net cost of the scheme" in paragraph 4 at p. 193 seems to mean not the total statutory costs of the scheme viz. that computed in according with section 16 and recoverable wholly or in part in the manner specified in section 18 but "the net cost of the scheme to the local authority" as referred to in paragraph 3(4) of the Commissioners' recommendations incorporated and accepted in G.R., R.D. No. 3734/33, dated the 24th July 1936. In making grants either in cash or in the shape of a concessional price for lands vesting in Government as reconstituted plots under a finally sanctioned town planning scheme, Government willbe entitled to take the fully developped valuation into consideration. (See paras 7 and 10 at pp. 185-188 ante).

If I am right in my interpretation of the notes of Deputy Secretary, F.D. referred to above, the remarks of C.D. in paragraph 3(b) at pp. 203-204 concurred in by the

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consulting Surveyer to Government in paragraph 6 at pp. 209-210 ante would be based upon a misunderstandin of the suggestion of Deputy Secretary, F.D. If on theother hand I am wrong in the above interpretation, it is clear that the costs of the scheme under section 16(1)(d) include market values at the date of the declaration of intention to make a scheme and not the fully developed values. Fully developed values would be obly of reconstituted plots while vslues of original plots will be their undeveloped values for the purposes of the town-planning scheme.

O.C. Sd/-P.N.M.
Remembrancer of Legal Affairs

U.R. to the G.D. No. 427 dated the 17th January 1941.

V.VK.
25/4/56.

Office of the R.L.A.

Section 48 of the Bombay Town Planning Act, 1915 is the only specific provision that can be availed of by Government to get all theunexecuted words of theBandra Town Planning Scheme carried out on account of thedefault being made by thelocal authority. The view expressed in paragraph 7 of theG.D. office note at p. 43 ante appears to be correct.

2. The local authority is bound to pay now to Government the amount of compensation awarded under the scheme unless Government agrees to give time or to receive the payment in instalments (se section 25). In the absence of any provision in theAct providing forrecovery of thecompensation amount from the local authority otherwise than by a suit, against the local authority to recover the compensation amount due from it. The view expressed in paragraph 8 of the G.D. office note at p. 43 ante appears to be correct.

Sd/-P.N.K.
O.C. 12/2
Remembrancer of Legal Affairs.

U.O. to the G.D., No. 1355 dated the 13 th February 1941.

V.V.C.
25/4/1956.

Office of the B.L.A.

If, as is proposed in these papers, the sanction of the Provincial Government under section 14(2) is to be given upon a contingent condition the fulfilment of which would necessarily involve modifications in the draft scheme, it would be desirable first to settle the modifications in question and thereafter to sanction the scheme with those modifications embodied therein. Such a course will avoid any possible breach of section 11 as also the difficulties in leaving these modifications implementing the proposed condition to be carried out by the arbitrator within the limited scope of his powers under section 30(10) subject to his powers under the proviso thereto, the arbitrator shall draw up the final scheme in accordance with the draft scheme, the obligatory particulars whereof are enumerated in section 11

Sd/- P.N.M.
15/2

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Remembrancer of Legal Affairs.

U.R. to G.D., No. 1462 dated the 15 th February 1941.

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Office of the B.L.A.

It is unnecessary in this case to challenge the proposition of law relied upon in the opinion at page 3 ante viz., unless a particular use is prohibited by theregulation such use must be presumed to be permitted. While it is clear enough that a cinema studio is not a shop, tenement or stable it is difficult to understand why it is not a factory within the prohibition in Regulation 3 . The word "factory" is not defined either in the Act or theregulations made under the Vile Parle Town Planning Scheme. Consequently it will have to be given its ordinary meaning. "Factory" as defined in the Webster's New International Dictionary means " a building or a collection of buildings usually with its equipment or plant appropriated to themanufacture of goods; the place where workmen are employed in fabricating goods, wares or utensils; a manufactory the making or manufacturing of anything". A cinema studio is a place where films are produced or manufactured for a commercial purpose and films are a kind of goods (cf. section 2(7) of theIndian Sale of Goods Act, 1930). Consequently a cinema studio would prima facie appear to be a factory within the meaning of regulation No.3 of theRegulations made under the Vile Parle Town Planning Scheme. The erection and theuse of thestudio within the area of theVile Parle Town Planning Scheme would therefore seem to be in contravention of the scheme and it would appear to be legally feasible to take action under section 43. The Commissioner's decision in this respect will be final (see section 43(3) of the Bombay Town Planning Act, 1915) and may, if necessary, be obtained. Attention is also invited to the provisions of section 43(3) of the Bombay Town Planning Act, 1915.

Sd/-P.N.M.
O.C. 19/2

Remembrancer of Legal Affairs.

U.O. to G.D. No. 1590 , dated the 20th February 1941.

V.V.K.
25/4/56.

Office of the R.L.A.

The draft G.R. at page 13 ante , as slightly amended is legally in order. The proposal of the Commissioner made by him in paragraph 7 of his letter at pages 1-5 ante is for the resumption of the powers under regulation 11 of the regulations controlling the development within the area of the Town Planning Scheme Amalner No.1 The other regulations do not appear to refer to any power to be exercised by the Municipality or any duty to be performed by the Municipality. The draft G.R. has therefore been suitably amended providing for the exercise of the powers and performance of duties by the Collector under regulation 11 of the Regulations

Sd/-P.N.M.
24/3
O.C.
Remembrancer of Legal Affairs.

U.R. to the G.D. No. 2097 , dated the 25th March 1941.

V.V.K.
26/4/66.

Office of the R.L.A.

The various functions of the Arbitrator under the Act include-

(1) the function of drawing up the scheme with necessary variations under section 30(19) of the Bombay Town Planning Act, 1915, and

(2) the function of being consulted for concurrence by the local authority under section 15(1)(b) of the Act. As regards (1) , it is clear from R.L.A.'s opinin No. 10579 , dated 2-12-1940 that the arbitrator has no authority to change the scheme after he draws it up and submits it through the local authority to Government for sanction under section 40(1) of the Act. As regared (2), the position will be as follows :-

2. Section 15(a) of the Bombay Town Planning Act, 1915 provides that when a local authority has declared its intention to make a scheme [illegible] no person shall, within the area included in the scheme erect or proceed with any building or work, or remove or pull down, or alter any building, unless such person has obtained a commencement certificate from the local authority. Clause (b) of that sub-section , as amended by Bom.Act XXI of 1939, provides inter alia that if an Arbitrator has been appointed under section 20, the local authority shall not grant such certificate without the privious concurrence of such Arbitrator. This provision was intended to secure that buildings to be erected before the scheme comes into force may be in accordance with the regulations to be made and sanctioned under the Town Planning Scheme. (see Statement of Objects and Reasons, Assembly Debates 1938 Vol. 3, Part II page 3162). The Act itself does not specify thedate on which the control of the Arbitrator in this matter should cease, but from the provisions of section 15(3) it appears that it would cease when the final scheme as sanctioned by Government comes into force , whereupon it is the duty of the local authority to enforce and execute the scheme . (See sections 42and 43 of the Act). Consequently, until the scheme comes into force as provided in section 40 of the Act, it is competent for a local authority to make references to the Arbitrator under Section 15(1)(b) of the Act

P.N.M. V.V. 26/4/56.
R.L.A.

U.O. to G.D. no. 5084 of 2-6-1941.

Office of the R.L.A.

Final plot No. 46 of Rajpur Hirpur, Kanipur Town Planning Scheme Ahmedabad, was reserved for [redacted]ers for the purpose of a school, and playground. It is now proposed to acquire it on behalf of the Municipality for the purpose for which it was reserved. The question raise for consideration is whether it is necessary to have the Scheme varied under section 46(1) of the Bombay Town Planning Act, 1915 before proceeding with the acquisition. The period of reservaion has not expired, and its acquisition is for a purpose not different from the purpose for which it was reserved. Consequently no variation of the Scheme is necessary (See R.L.A.'s opinion No.7763 dated 30th August 1940). R.L.A.'s opinion No. 6546 dated 22nd June 1939 is distinguishable and was based on a different set of facts, and the acquisition proposed in that case was of land which under the Scheme was not reserved for purpose for which the acquisition was proposed. That opinion therefore would not apply in this case.

Sd/- P.H.M.
O.C. 2/6
Remembrancer of Legal Affairs.

U.H. to G.D. No 5074 dated the 3rd June 1941.

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2674/56.

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It appears that Government accorded its sanction to the draft Town Planning Scheme known as the Santa Cruz Town Planning Scheme No. 5 prepared by the Notified Area Committee of Santa Cruz subject to certain modifications. Thereafter the Notified Area Committee ceased to exist and the area was merged in the Bandra Municipality. Consequently, under section 191(1) of the Bombay District Municipal Act, 1901, the property and rights which vested in the Notified Area Committee under the Municipal Act vested in the Bandra Municipality -- subject to all charges and liabilities affecting the same. The Bandra Municipality has now passed a resolution agreeing to undertake the rights and liabilities of the defunct Notified Area Committee, Santa Cruz, in respect of the Santa Cruz Town Planning Scheme No. 5 on the understanding that it should not be called upon to meet any cost from its general revenues and that the cost should be met from the contributions to be paid by the owners. The question for the consideration of the Remembrancer of Legal Affairs is --

Whether the rights under the Town Planning Act vested in the defunct Notified Area Committee as regards the making and execution of the scheme can be transferred to the Bandra Municipality at this stage under section 45A of the Bombay Town Planning Act, 1915.

2. By section 41 of the said Act the property and proprietory rights as settled in the Town Planning Scheme become vested in the local authority after the scheme comes into force. Under various other sections of the said Act local authorities are invested with certain rights (attached with liabilities) for the purposes of preparation, making and execution of a town planning scheme; these are rights other than proprietory rights and are not covered by section 41. Section 45A of the Act provides that when any local authority ceases to exist or ceases to have jurisdiction over any area included in a town planning scheme the property and rights vested in such local authority under this Act shall subject to all charges and liabilities affecting the same

vest in such otherlocal authority or authorities as the Provincial Government may with the consent of such authority or authorities by notification in the Official Gazette direct. The term "rights" in this section is very wide and would include theproprietory rights (covered by section 41) as well as the procedural and other rights under the Act in the making and execution of th scheme (not covered by section41). This is clear from the ject of the section which is to enable a local authority to take over a town planning scheme or a part thereof initiated by another local authority which has ceased to exist or to have jurisdiction over any area included in such a scheme (see Statement of Objects and Reasons to Act XVI of 1920 by which section 45A was inserted).

3. B.L.A.'s opinions Nos. 2823, dated 13th March 1939 and 6723, dated 28th June 1939, concerned a joint town planning scheme where the rights to prepare, make and execute the scheme vested in the Joint Town Planning Board under section 45 of the Act so that there was no question of transfer of rights other than proprietory rights under the Act. As regards the transfer of proprietory rights under the Act, the B.L.A. advised in these opinions that section 45A was inapplicable but that the case would be governed by section 191(1) of the District Municipal Act, 1901.

4. In the present case the property- and proprietory rights of the defunct Santa Cruz xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Notified Area Committee already vest in the Bandra Municipality under section 191(1) of the District Municipal Act. The question now concerns the transfer of therithis of the said Committee to the Bandra Municipality as regards themaking and execution of the Town Planning Schememem already initiated by the Committee (there being no joint town planning board). This is clearly covered by section 45A The scheme can, therefore be carried through by the Bandra Municipality but only after the rights of the defunct Notified Area Committee are transferred to it in accordance with the procedure of section

O.C. Sd/-K.N.W.
5/6
Remembrancer of Legal Affairs.
June 1941.

U.R. to G.D. No. 5162 , dated the 7th June 1941.

Statement of the Case for
The opinion of the Advocate General, Bombay.

The Hubli Borough Municipality constituted under the Bombay Municipal Boroughs Act, 1925, was superseded and an Administrator has been appointed under section 219(2)(b) of the said Act, to exercise and perform the powers and duties of the superseded Municipality. As the Administrator wanted to undertake town Planninning scheme in respect of certain areas of Hubli and it's suburbs, he inquired if he was competent to exercise the powers of the "local authority" under the Bombay Town Planning Act, 1915.

2. The question for consideration is whether the Administrator appointed under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925, can be deemed to be a "local authority" under section 2(a) of the Town Planning Act, 1915. In 1923, the A.L.A. (Mr. Murphy) held that the point was doubtful, and that a committee of management appointed under section 179(2)(b) of the Bombay District Municipal Act, 1901, though not quite the same as a Municipality was

probably a "local authority" but that it was possible to take a contrary view. In 1939 the R.L.A. (Mr. Dhurandhar) held that though an Administrator of a superseded Municipality could exercise the powers and perform the duties of the Municipality under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925, and those powers and duties included the powers and duties under other Acts as well, he was not a Municipality and hat consequently the Administrator appointed under section 219 (2)(b) of the Bombay Municipal Boroughs Act, 1925, was not a "local authority " as defined in section 2(a) of the Bombay Town Planning Act 1915, and would not be competent to un ertake a town planning scheme (vide R.L. A.'s opinion No. 5394, dated the 20th September 1939). This view was adhered to in his subsequent opinions No. 1999, dated the 23rd February 1940 in which it was held that "during h the supersession of a Municipality there would be no Municipality in existence".

3. I do not agree with the proposition enunciated in the aforesaid opinions that a Municipality cannot, during the period of its supersession, be deemed to exist. For the reasons recorded in my opinion No. 4632, dated 21-5-41, I am inclined to hold that the Municipality does not cease to exist by reason of its supersession, and that the Administrator can exercise and erform all the powers and duties of the Municipality during the period of its supersession, including the powers and duties of the Municipality under other Acts as well.

Attention

[redacted] Attention is invited, in this connection to the opinion of the A.L.A. (Mr. Davis) No. 127-Confl, dated 10-3-33 and to the Advocate General's opinions Nos. 60, dated 18-10-31 and 56 dated 12-8-33.

Pages 43-46 of G.Pri.Edn.Dep. /33.
Pages 271-273 - do- /31
Pages 48-61 - do- /33.

4. As I differ from the view expressed by my predecessor, and as the point is of considerable importance, the Advocate General is requested to advise whether an Administrator appointed under section 219(3)(b) of the Bombay Municipal Boroughs Act, 1925, is competent to exercise the powers and perform the duties of a "local authority" under the Bombay Town Planning Act, 1915.

Sd/- [illegible]
Remembrancer of Legal Affairs.

U.O. to the Adv. General, Bombay
No.5505 dated the 20th June 1941.

V.VK.
25/4/1936.

The question for consideration is whether the Administrator appointed under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925, can acting as a "local authority" under section 9(1) of the Town Planning Act, 1915, declare his intention to make a Town Planning Scheme.

2. Section 2(a) of the Town Planning Act, 1915, defines the words "local authority" as meaning "a Municipality", or where there is no Municipality , "a Committee" appointed for a notified area under the provisions of Chapter XIV of the Bombay District Municipal Act, 1901. The answer to the question for consideration therefore depends on whether a person appointed under section 219(2)(b) of the Boroughs Act, 1925 is "a Municipality" or, an entity distinct from " a Municipality".

3. The Boroughs Act, 1925, is an Act to amend the law relating to the management of Municipal affairs. Section 8 provides that in every Municipal ~~Borough~~ Borough there shall be a Municipality and every such Municipality shall be a body corporate by its particular name and shall have perpetual succession and a common seal and may sue and be sued in its corporate name through its Chief Officer. Section 9 of the Act provides that every such Municipality shall consist of Councillors as therein provided. Section 16 provides for the vesting in the Municipality of property, rights , and liabilities of a Municipality. Section 219(1) gives the power to Government , in the events there mentioned, either to dissolve a Municipality or supersede it for a specified period. Sub section (2) of that section provides that on dissolution or supersession certain consequences shall ensue. One of the consequences is (Sub section 2(b)) that all powers and duties of the Municipality are, during the period of dissolution or supersession, to be exercised by the person or persons appointed by the Commissioner. A further consequence, (sub section(2)(c), is that all the property vested in the Municipality is during the

V.V.K.
28/4/1956.

the period of dissolution or supersession to be vested in His Majesty. A still further consequence (sub section (2(e)) is that suits in respect of the affairs of the Municipality have to be filed by or against the person, or, if there is more than one person, any one of them who has been duly authorised and appointed under sub section (2)(b) of the Act. Sub clause (v) of sub section (2) refers to the re-establishment of a Municipality which has been superseded.

6. These provisions, to my mind , make it clear that during the period of supersession the Municipality is as it were suspended. It being in a state of suspension, its powers and duties are being exercised and performed by the person appointed under sub section (2)(b) of section 219. The person appointed under 219(2)(b) is distinct and different from the Municipality, which, as I have said, is suspended, and he cannot be said to be , the Municipality. He may have the right to exercise all the powers and perform all the duties of the Municipality, but he still is not and cannot be said to be "the Municipality". And so long as he is not " the Municipality" he does not fall within the definition of section 2(a) of the Town Planning Act, and will not be in a position to exercise the powers given to the local authority under section 9 of that Act.

5. The decision in 29 Mad. 529 , is not helpful in the consideration of the question raised. There, having regard to the provisions of the Madras District Municipal Act, which in terms are materially different from section 219 of our Act, the Court dealt with the question whether during its supersession a Municipality could be said to be extinguished or dormant. The Court held, on the construction of the section before them , which provided that different consequences were to ensue in a case of dissolution as contrasted with a case of supersession, that during supersession the Municipality could be said not to be extinct but to have existed in a state of dormancy. Whether the Municipality has ceased to exist or whether

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20/4/56.

whether it exists though in a suspended state is, to my mind, irrelevant to the question under consideration. Whether during the period of supersession the Municipality is extinct or is in a state of dormancy, it is clear that the person appointed under section 219(2)(b) is not the Municipality.

6 My answer, therefore, to the question under consideration is in the negative.

Sd/-
O.C.: 15/7/41.
Advocate General.

U.R. to G.D. 6350 of 21-7-1941.

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20/2/58.

Office of the L.A.

The Town Planning Scheme of the Godhra Municipality as sanctioned by Government in 1939 has by virtue of section 40(3) of the Bombay Town Planning Act, 1915, effect as if it were enacted in the Act and if the Municipality fails to exercise any power conferred or duty imposed under any of the provisions of the Act or the scheme, action under section 43 would be competent. Mere failure to apply for modification of the scheme by the Municipality as desired by Government would not be a default in the exercise of its power or the performance of its duty within the meaning of section 48. Consequently no action against the Godhra Municipality under section 48 would be legally feasible. The view taken in L.A. office note at page 11 ante is not correct.

Sd/- N.M. 30/7
O.C.
Remembrancer of Legal Affairs.

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30/7/41.

U.R. to G.D. No. 6756 , dated the 31st July 1941.

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25/4/1956.

office of the L.A.

The first question for consideration of the R.L.A. is whether the action of the arbitrator in the present case in transferring the inami and gaothani tenures from the original plots to the reconstituted plots without the previous sanction of Government is not lawful.

It is true that in Government Resolution, Revenue Department, No. 3627, dated the 9th July 1923, Government has held that the sanction of Government is necessary to the transfer of Gaothan and Inami tenures to other plots by the arbitrator in town planning schemes. But section 30 of the Bombay Town Planning Act, 1915, gives full power to the arbitrator to transfer the right in the original plot to the reconstituted plot and does not provide for the previous sanction of Government to the transfer of such right. Consequently the action of the arbitrator does not prima facie appear to be unwarranted. In any case, the final scheme before it comes into force requires the previous sanction of Government under section 40(2) and the transfer of any right from an original plot to the reconstituted plot by the arbitrator would not be binding unless Government sanctions the final scheme.

2. The second question for consideration is whether it would be legal for purposes of section 40(2) to fix a tentative price of the scheme book when printed copies are not at all available.

Section 40(2) provides that if Government sanctions such scheme it shall be stated in such notification where the final scheme is open to inspection and the price at which copies may be obtained etc. The words underlined indicate that copies must be available for sale at the time of such notification. A definite price at which copies may be available will have to be stated in the notification. The

view taken in paragraph 3 of G.O. office note does not appear to be correct.

3. The third question for consideration is whether it is open to the arbitrator to cancel the conditions contained in Note 12 to the scheme.

When once the matter is referred to the Tribunal of Arbitration under Chapter IV it is for the Tribunal to decide all matters and the only thing the arbitrator can do is to forward the final scheme as it emerges from the Tribunal of Arbitration to the Provincial Government under section 40(1). Ordinarily therefore the arbitrator has no power to cancel the conditions attached to any scheme. Note 12 containing the condition in the present case was, however, void ab initio being a nullity and Government would have deleted it while sanctioning the final scheme (see B.L.A.'s opinion No. 6916, dated 27th May 1939). No objection need therefore be taken to the arbitrator cancelling the conditions contained in Note 12 in the final scheme submitted to Government since it does not affect the legal position.

4. The last question for consideration is whether it is competent for Government to modify the scheme relating to the change in the area of some plots on actual measurement at the time of submitting the final scheme.

It appears from the letter of the Consulting Surveyor to Government at page 47 ante that as a result of the present survey there is an increase of area in the case of 38 final plots, decrease in the case of 61 final plots and no change in the case of 6 final plots and that the financial effect of such change is that the local authority will have to bear an additional amount of Rs. 1,414 only. The modification involving change in the area of the said plots is the result of fresh survey measurement and does not therefore appear to arise from an error, irregularity or informality within the meaning of section 40(1) particularly in view of section 31

26/4/56.

read with section 30(1) of the Act which rednedrs the areas as fixed by thearbitrator ~~XXXX~~ final, conclusive and binding. Consequently the modification of the scheme as suggested by the Consulting Surveyor would not be competent.

Sd/-P.C.M.
O.C. 12/8
Remembrancer of Legal Affairs.

Sd/-
12/3/41.

U.O. to G.D. No. 7192 , dated the 14th August 1941.

V.V.
26/4/56.

Office of the R.L.A.

As pointed out in the Advocate General's opinion No. 19 of 1940, dated 21st April 1940 , when any land is included in a Town Planning Scheme on the basis that it is required for a public purpose i.e. the laying out of that Scheme , Government cannot act under the Land Acquisition Act, 1894 , declaring the same land to be acquired for another public purpose . In this view the acquisition under the Land Acquisition Act of the Kochrab lands which are stated to have been included in the Ellis Bridge Town Planning Scheme was not free from objection The acquisition, however , is in this case already complete and possession of the lands is taken and transferred to the Municipality. Government Government has no powers under the Land Acquisition Act to set aside the proceedings already taken . The petitioners also will not be able to challenge the proceedings in a court of law. Under section 6(3) of the Land Acquisition Act a declaration made by Government under section 6(1) of the Act that any particular land is needed for public purpose is conclusive evidence that the land is needed for public purpose and the court cannot go into the question. (Cf. Purshottam Jethalal vs. Secretary of State 39 B.L.R.1257 at p. 1263, Secretary of State vs. Akbar Ali I.L.R. 46 All.643 and Veeraraghavachariar vs. Secretary of State I.L.R. 49 Mad.237). Under section 16 of the Act when the Collector has made an award, he may take possession of the land which thereupon vests absolutely in the Government. As the lands in the present case are already acquired the only feasible course to adopt appears to be to take action under section 46(1) of the Town Planning Act, 1915, after the final Scheme is sanctioned to vary the Scheme in conformity with the acquisition made.

Sd/- .....
O.C. 8/11
Remembrancer of Legal Affairs.

U.O. to G.D. No. 8670 dated 10th November 1941.

V.V.K.
26/4/66.

Office of the Rel.&A.

It appears that the Ghatkopar-Kirol Municipality has failed to evict the Pujari of the Maruti Temple under section 43 and to remove under section 43 of the Bombay Town Planning Act, 1915, the encroachments in the Final Plot No. 81 allotted to the G.I.P. Railway Administration in the Town Planning Scheme Ghatkopar No.II finally sanctioned by Government by General Department Notification No. 7489, dated 26th March 1933. The questions for consideration of the Law Embrancer of Legal Affairs are:—

(1) Whether Government can take action under section 43 of the Bombay Town Planning Act, 1915; and

(2) Whether it is necessary for Government to take such action if the Railway Administration so desires.

2. Section 48 of the Bombay Town Planning Act, 1915, inter alia provides that if in the opinion of the Provincial Government any local authority neglects or fails to exercise or perform any power conferred or duty imposed upon it under any of the provisions of this Act the Provincial Government or any person or persons appointed in this behalf by the Provincial Government, may exercise such power or perform such duty. Sections 48 and 43 confer on the local authority the power to evict persons in unauthorised occupation of land and to remove encroachments. Consequently the failure on the part of the Ghatkopar-Kirol Municipality to exercise this power under sections 42 and 43 would enable Government to step in under section 48 and have the pujari evicted and the encroachments removed in the present case.

3. It is true that the use of the word "may" in sections 42, 43, and 48 indicates that it is not strictly obligatory either for the local authority or for the Provincial Government to get the encroachments removed and it would be open to Government to leave it to the Railway Administration to take

whatever steps it likes to have the pujari evicted and the encroachments removed. It appears however that the intention of the Legislature in incorporating these provisions in the Act is to enable the owners of final plots to get into peaceful possession as early as possible so that the Scheme in all its legitimate aspects may materialise soon

Sd/- P.N.M.
O.C. 9/12
Remembrancer of Legal Affairs

U.R. to G.D. No. 10621 dated the 10th December 1941.

V.VK.
26/4/56.

Office of the R.M.A.

By the first variation draft scheme sanctioned under section 14(3) of the Bombay Town Planning Act, 1915 by Government by G.R.& G.D. No. 3650/33, date the 28th March 1941, the Local Authority Sholapur, proposes to amend regulation 12 while by the second variation draft scheme sanctioned by Government by G.R. to G.D. , No. 3650/33, dated the 14th July 1941, the same Local Authority proposes to modify the regulations 10 ,11, and 15, by inserting the new regulation 15-A. Although the Local Authority has initiated the two different variation draft schemes on two different dates, still both of them have now reached a common stage, namely , the stage of preparing a final scheme for submission to Government under section 30(10) There appears therefore no legal objection to the arbitrator combining the two draft variations into one final scheme by inserting both the regulations one after another.

2. The next question raised for the consideration of the Remembrancer of Legal Affairs is whether reference to the Tribunal of Arbitration is necessary when there is no matter on which the arbitrator has to make any proposal under section 32. That section provides that in matters arising out of clauses (3) , (3A) , (3B), (3C) ,(4),(5),(6)and (9) of section 30 the arbitrator shall determine , estimate or calculate what is required by such clauses to be determined, estimated or calculated and shall forthwith make proposals on all such matters to the President of the Tribunal of Arbitration for the decision of the Tribunal If as reported by the Arbitrator the two draft variations in the scheme do not involve any proposals in respect of which the decisions of the Tribunal of Arbitration are necessary, section 32 will have no application and no reference to the Tribunal of Arbitration would be necessary. The provisions of sect. 40 also will not in these circumstances present any legal difficulty in the omission of an impossible reference.

D.C. Sd/-P.N.M. 12/2
Remembrancer of Legal Affairs.

V.VK.CC/4/88. U.S. to G.D. No. 10734 dated 13-12-1941.

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